

**OPINION
59-238**

November 13, 1959 (OPINION)

PUBLIC BUILDINGS

RE: General regulations - Use of Native Fuel Products - Fuel Oil

This is in reference to your letter in which you state that the institutions of higher learning are now using coal or gas as fuel at the several institutions. They are presently considering installing a heating plant or boiler that will use oil as a fuel. You then ask if it is permissible under the Constitution or statutes of North Dakota to use oil as a fuel.

Section 48-0502 of the North Dakota Revised Code of 1943 as is material here provides that:

"PUBLIC INSTITUTIONS TO USE NATIVE FUEL PRODUCTS. The various state institutions, county buildings, and public school houses in this state shall use North Dakota native or lignite coal or lignite coal products, North Dakota native natural oil, or North Dakota native natural gas, for fuel. No officer shall purchase for use in such institutions, county buildings, and public schools any fuel other than that taken from the mines or wells within the boundaries of this state. . . ."

In examining the law involved to determine its meaning we observe it uses the term "North Dakota native or lignite coal or lignite coal products, North Dakota native natural oil, or North Dakota native natural gas." Following this language we find a statement which we believe clarifies the foregoing terms. The clarifying language is:

". . . . No officer shall purchase for use in such institutions any fuel other than that taken from the mines or wells within the boundaries of this state. . . ." (Underscoring ours)

The import of this clarifying sentence is that it explains what was meant by the foregoing terms. In essence and effect it declares that the products used for fuel must be taken from North Dakota mines or wells. It is noted that the provisions of the above statute do not require that such products be used in their native state (original condition or status). It merely requires that the product be a native material - native oil or native gas or native lignite.

We must take into consideration that the statute in question was enacted some time before the advent of oil producing wells in this state. It was enacted at a time when lignite coal was considered the only practical native fuel produced in North Dakota. Nevertheless the Legislature also provided for the use of native natural gas and oil as a fuel. In this connection it was observed that the statute provides that the use of lignite coal products is permissible.

While the term "lignite coal products" does not specifically modify

gas or oil, it does strongly indicate that the Legislature merely intended to permit lignite to be used as a fuel in any one of its forms. This could well also apply to gas and oil. However, the statute is sufficiently broad enough to permit the use of any gas and oil which is produced from a well in North Dakota.

It is a well known fact that North Dakota has become an oil and gas producing state and that such oil and gas is produced from the wells in the state.

As pointed out before, the statute in question does not require that the fuel must be used in its native state, but that it be native to the state. Oil as found in its native state is processed, resulting in several kinds of oil - fuel oil is one of such products. The main point is that it is found and produced from wells in North Dakota.

It is therefore our opinion that oil may be used as fuel by institutions of higher learning under the provisions of the statute set out above.

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